

The information submitted states that X was formed as an entity under the laws of Country on Date 1. X represents that, as a foreign eligible entity, X was able to elect to be treated as a disregarded entity effective Date 2. However, X inadvertently failed to timely file Form 8832, Entity Classification Election, electing to treat X as a disregarded entity effective Date 3.

LAW AND ANALYSIS

Section 301.7701-3(a) of the income tax regulations provides in part that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes. An eligible entity with at least two members can elect to be classified as either an association or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(2) provides, in part, that unless an election is made a foreign eligible entity will be classified as a "corporation" for U.S. income tax purposes if it offers its members limited liability. Section 301.7701-3(c)(1)(i) provides, in part, that an entity may elect to be classified other than as provided under section 301.7701-3(b) by filing Form 8832, Entity Classification Election, with the IRS Service Center designated on the form.

Section 301.7701-3(c)(1)(iii) provides guidance on the classification of a foreign eligible entity for federal tax purposes. Generally, a foreign eligible entity is treated as an association if all members have limited liability, unless the entity makes an election to be treated otherwise. A foreign eligible entity with two or more members having limited liability may elect to be treated as a partnership pursuant to the rules of § 301.7701-3(c). Section 301.7701-3(c) provides that an entity classification election must be filed on Form 8832 and can be effective up to 75 days prior to the date the form is filed or up to 12 months after the date the form is filed.

Section 301.7701-3(c)(2) provides that such an election must be signed by either (A) each member of the electing entity who is an owner at the time the election is filed; or (B) any officer, manager, or member of the electing entity who is authorized (under local law or the entity's organization documents) to make the election and who represents to having such authorization under penalties of perjury.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections. Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2.

Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the government.

CONCLUSION

Based solely on the information submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, X is granted an extension of time of 120 days from the date of this letter to file a Form 8832 with the appropriate service center to elect to be treated as an association treated as a disregarded entity for federal tax purposes effective Date 3. A copy of this letter should be attached to the Form 8832 filed for X.

This ruling is contingent on the owners of X filing within 120 days of this letter all required returns and amended returns for all open years consistent with the requested relief. These returns may include, but are not limited to, the following forms: (i) Forms 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, (ii) Forms 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, and (iii) Forms 8858, Information Return of U.S. Persons With Respect to Disregarded Entities, such that these forms reflect the consequences of the relief granted in this letter. A copy of this letter should be attached to any such returns.

If applicable, this election is disregarded for purposes of determining the amounts of all section 965 elements of all United States shareholders of X if the election otherwise would change the amount of any section 965 element of any such United States shareholder. See § 1.965-4(c)(2).

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In addition, § 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that the taxpayer is otherwise eligible to make the election.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed

by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Holly Porter
Associate Chief Counsel
(Passthroughs & Special Industries)

David R. Haglund

David R. Haglund
Branch Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes

cc: